IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 691 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIMKHAN MOHMEDKHAN PATHAN

Versus

HEIRS OF VALIMOHMEDKHAN BALOLKHAN

Appearance:

MR RAJNI H MEHTA for appellant.

MR A.R. Thakkar, for Mr.JR NANAVATI for Respondents.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE K.A.PUJ

Date of decision: 08/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellants, original-opponents, who were driver, owner and Insurance Company of the offending vehicle, motor-truck bearing Registration No. GTY 4475, have questioned the judgment and award dated November 21, 1988, passed by the Claims Tribunal (Main), Surendranagar, in Motor Accident Claim Petition No. 139 of 1986. By its judgment and award, the Tribunal awarded compensation in favour of the respondent-claimants for the amount of Rs. 1,32,000/- with interest at the rate of 6% p.a. from the date of the petition till realisation and proportionate costs. Deceased, Valimohmedkhan Balolkhan, who was serving as Traffic Inspector in Gujarat State Road Transport Corporation, was travelling in an ambassador car along with other co-passengers on October 6, 1985. The ambassador car was bearing No. GJE 8939. The said car was proceeding from Junagadh to Ajmer. When the said car reached near Dabajipara between Vitthalgadh and Viramgam it collided with the truck bearing registration No. GTY 4475. Due to collision between the ambassador car and the truck, the deceased sustained serious injuries and succumbed to the injuries. The respondents-claimants who were the heirs and legal representatives and the dependents of the deceased Valimohmedkhan filed M.A.C.P. No. 139 of 1986 claiming compensation of Rs. 2,00,000/= for the tragic death of the deceased Valimohmedkhan. It was averred in the application, that the deceased was aged about 44 years at the time of the accident and was serving as Traffic Inspector in the Gujarat State Road Transport Corporation and was drawing a salary of Rs. 1,342.35 ps. It was further averred that deceased could have earned gratuity and his pay would have been increased. In all, the claimant-respondents claimed compensation of Rs. 2,00,000/= against the appellants No. 1 and 2 who were the driver and owner of the truck in question. The truck in question was insured with the appellant No.3 Insurance Company.

2. The opponents No. 1 and 2 filed their reply at Exhibit 21 and admitted the case of the accident which had taken place between Vitthalgadh and Viramgam. However, it was averred that the truck was driven very carefully and solely by the appellant No.1. It was further averred that the negligence on the part of the driver of the ambassador car had also contributed in causing the accident.

3. The appellant No.3, Insurance Company filed its Written Statement at Exhibit 11, inter alia, contending that the owner, driver and insurer of the ambassador car involved in the accident were necessary parties to the Claim Petition and as they were not joined in the

petition the petition was likely to be dismissed on the ground of non-joinder of necessary parties. According to the Insurance Company, the driver of the truck was not holding valid driving licence and therefore the petition be dismissed with costs.

4. On the aforesaid pleading of the parties, necessary issues were framed by the Tribunal, Exhibit 12. The claimants, in support of their case, examined one Sabirkhan Ibrahimkhan, a co-passenger in the ambassador car, at Exhibit 34 and another co-passenger in the ambassador car, namely Lalbhai at Exhibit 46. The Panchnama of the place of the accident and FIR were also placed on the record of the application. On the overall appreciation of the documentary evidence, the Tribunal came to the conclusion that the driver of the truck was solely negligent in causing the accident.

5. On the quantum of compensation, the Tribunal assessed the monetary loss caused to the estate At Rs. 800/= per month, taking into account the monthly salary of the deceased Valimohmedkhan at Rs. 1,342.35 ps. It may be mentioned that the Tribunal had not taken into account the prospective income of the deceased Valimohmedkhan. The Tribunal had adopted multiplier of 14 looking to the age of the deceased at the time of the accident, which was 44 years. The Tribunal awarded compensation of Rs.1,32,000/=to the respondent-claimants, who are the dependents of the deceased Valimohmedkhan, which has been challenged in this appeal by the appellants.

6. Learned advocate, Mr. R.H. Mehta and learned advocate Mr. A.R. Thakkar who appears for ld. advocate, Mr. J.R. Nanavati, have taken us through the entire Record and Proceedings of the case. The learned advocate for the appellants has submitted that in the FIR the name of the driver of the truck was not mentioned and the evidence of the two co-passengers was contradictory, and therefore the Tribunal erred in not holding that the truck driver was not negligent in causing the accident. In our opinion, the submission of the learned advocate for the appellants deserves to be rejected. On going through the oral as well as documentary evidence, we are satisfied that the accident in question was caused by the sole negligence on the part of the appellant No.1, driver of the truck bearing No. GTY-4475. It may be mentioned that the driver and owner of the truck had admitted in the written statement about the factum of the accident. The driver of the truck had not entered in the witness box to depose that he was not negligent in causing the accident. In absence of any evidence led by the

appellants, we are of the view that the negligence on the part of the truck driver caused the accident in question.

7. On the quantum of compensation, we are of the opinion that the compensation awarded by the Tribunal in favour of the respondent-claimants is quite just and adequate, looking to the income of the deceased Valimohmedkhan who was working on the relevant date as Traffic Inspector in the Gujarat State Road Transport Corporation and was earning a salary of Rs. 1,342.35 ps. If the Tribunal had taken into consideration the prospective income of the deceased, then the award would have been higher, but in absence of any cross-objection or appeal, no higher compensation can be awarded in favour of the claimants and, therefore, we confirm the award of the Tribunal by which a sum of Rs. 1,32,000/= was awarded in favour of the respondent-claimants with 6 per cent interest from the date of the petition till realisation.

8. As a result of the foregoing discussion, we do not find any merit in this appeal and it is hereby dismissed with no order as to costs.

[M.H. Kadri, J.]

rmr. [K.A. Puj, J.]